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Supreme Court of the United States

OCTOBER TERM, 1947.

No. 653.

RUSSELL BOX COMPANY,
Petitioner,
v.
GRANT PAPER BOX COMPANY,
Respondent.

PETITIONER'S REBUTTAL MEMORANDUM.

Petitioner prays leave to submit the following rebuttal memorandum.

Memorandum.

1. The respondent has completely failed to touch upon or answer petitioner's argument that *jurisdiction* in the court *does not exist unless the owners of the entire and unqualified monopoly are all present in court in a patent infringement case.* Grant Paper Box Company was not the owner of the entire and unqualified monopoly since it did not have the unrestricted right to dispose of or license under the patent. For this statement the *Washington Institute of Technology* case is clear authority. Since the assignee could not dispose of the patent without restriction, the Court of Appeals for the Third Circuit decided

that the assignee was not the owner. He did not possess the entire and unqualified monopoly. Petitioner relies on the *Technology* case as authority for the proposition that complete title did not pass to Grant Paper Box Company but that part ownership remained in Dreymann, who was not a party. It is not necessary for petitioner to rely on the conclusion of that case as to necessary parties.

The respondent here relies greatly on *Platt* v. *Fire Extinguisher Co.*, 59 Fed. 897 (C.C.A. 3), decided many years before, in the same Circuit that decided the *Washington Institute of Technology* case, in which, tacitly, the *Platt* case was overruled by the decision, if not by reference. The *Platt* case is not good law under the *Crown Die* and *Independent Wireless* decisions, where all owners are held necessary parties.

2. The respondent alleges that the petitioner is estopped by its stipulation from asserting the facts in the case. Petitioner replies that jurisdiction can never be a matter of estoppel and that *Mitchell* v. *Maurer*, 293 U.S. 237, 244 (cited Petition, p. 12), is clear authority to that effect.

Neither Rule 21 nor Rule 19 has any bearing on the case. Chief Justice Taft disposed of that argument in saying:

> "The equity rule was not intended to set aside a policy and rule having its source in the patent statutes and can not affect this case."
>
> *Crown Die & Tool Co.* v. *Nye Tool & Machine Works*, 261 U.S. 24, 44.

3. The *Crown Die & Tool* case (Petition, p. 14) answers the argument of respondent's that the judgment is not final. That jurisdiction is always open to question even

after judgment is decided in *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission,* 324 U.S. 635, 638: "If the objection is to the jurisdiction of the court, it does not come too late."

Petitioner respectfully prays that its rebuttal memorandum may be considered by the Court.

Respectfully submitted,

RUSSELL BOX COMPANY,
By HERBERT A. BAKER,
Its Attorney.

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